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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 319

MRS. BEULAH FISHER LEJEUNE, INDIVIDUALLY AND AS TUTRIX FOR HER MINOR CHILDREN,

Petitioner,

vs.

EXCESS INSURANCE COMPANY OF AMERICA,

Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT, AND BRIEF IN SUPPORT THEREOF.

EDWARD DUBUISSON,
Counsel for Petitioner.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 319

MRS. BEULAH FISHER LEJEUNE, INDIVIDUALLY AND AS TUTRIX FOR HER MINOR CHILDREN,

Petitioner,

vs.

EXCESS INSURANCE COMPANY OF AMERICA,

Respondent

PETITION FOR WRIT OF CERTIORARI

The petition of MRS. BEULAH FISHER LEJUNE, individually and as tutrix of her four minor children, through undersigned counsel, here seeks a writ of certiorari to review the judgment of the United States Circuit Court of Appeals for the Fifth Circuit, overruling a judgment of the United States District Court for the Western District of Louisiana, in favor of petitioner and against EXCESS INSURANCE COMPANY OF AMERICA, one of the two defendants in the suit and hereinafter called respondent.

Jurisdiction

The judgment of the Circuit Court of Appeals was en-

tered on May 25th, 1951 (R. 74), and its opinion is reported at 189 Fed. 2d 521. Application for re-hearing was timely filed by petitioner on June 15, 1951 (R. 81), and denied without reasons on June 26th, 1951 (R. 98). The jurisdiction of this Honorable Court is invoked under 28 U. S. C. Sec. 1254, Par. (1), 1946 Ed., Supp. IV.

Statement

Jurisdiction of the suit in the trial court was based on diversity of citizenship and the jurisdictional amount of $3000.00 exclusive of interest and costs.

Petitioner sued for damages for herself and her four minor children for the wrongful death of her husband, and their father. Suit was brought under the Louisiana direct action statute[1] against the defendant insurers, against respondent's co-defendant as the insured's primary public liability insurance carrier, and against respondent as the insured's carrier of public liability insurance in excess of the liability limit of the primary carrier. Recovery was sought on the ground of the negligence of the insured, as a result of which negligence decedent was allegedly electrocuted in Eunice, Louisiana, on September 20, 1947. Respondent and its co-defendant were served through the Louisiana secretary of state and ex-officio commissioner of insurance, on the assumption that both insurers were qualified to do business in Louisiana and had therefore appointed that official as their agent for service of process. Respondent's co-defendant was qualified to do business in Louisiana and promptly joined issue but respondent, contending that it was not transacting business in Louisiana, maintained no office or agents there, and had appointed no agent for service of process in that state, filed a motion to dismiss on

[1] Act 155 of 1930, Appendix, p. 38.

the ground of lack of jurisdiction over its person, improper venue, insufficiency of process and insufficiency of service of process (R. 14). While respondent's said motion was pending petitioner filed a supplemental complaint and served respondent through the secretary of state as its agent for service of process in meticulous compliance with two Louisiana statutes, Act 179 of 1918, sec. 1, subdiv. (6), par. (c[2]), and Act 195 of 1948, sec. 27.03, (b[3]). Respondent then renewed its motion to dismiss (R. 39). The trail judge overruled the motion (R. 42, 43), and respondent answered with reservation of its motion. The case was tried to a jury which found a verdict for plaintiff for $48,000.00 for herself and her said children (R. 62), and judgment was entered on the verdict (R. 65, 66). The court below affirmed as to respondent's co-defendant but reversed as to respondent on the ground that the latter's moton to dismss was good and should have been sustained. Petitioner's timely application for rehearing was denied and petitioner is here asking for review.

Respondent's motion to dismiss was tried on the complaint as amended, on an affidavit attached thereto (R. 14, 15), on the policy on which respondent was sued (R. 16-19, 102A-102C) and on two stipulations (R. 20-24). The facts shown by these instruments may be condensed briefly thus:

> Respondent was a New York corporation which had been qualified to do business in Louisiana prior to the year 1938. Thereafter, it maintained no office in Louisiana and no agents or representatives there, and had not appointed the Louisiana secretary of state or anyone else as its agent for service of process in that state. Respondent wrote the first of the series of

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[2] Appendix, p. 38.

[3] Appendix, p. 40.

policies here involved to cover the operations of Louisiana Public Utilities Company, Inc., in Louisiana, through a Texas broker, which policy was dated January 1, 1944. The policy was renewed yearly thereafter until May 31, 1946, when the policy was re-written through a Louisiana broker. On November 29, 1946, the policy was amended by endorsement to cover the Gulf Public Service Co., Inc., a Louisiana corporation domiciled and doing business in Louisiana, through the negligence of which insured decedent was allegedly electrocuted. The policy and endorsement were written and signed by respondent in New York, mailed by it to the Louisiana broker who delivered the policy in Louisiana to the Louisiana insured covering property situated in Louisiana and collected the premium from it there. The Louisiana broker then mailed the premium to respondent at New York, after deducting therefrom the commission which was due it by respondent for handling the transaction in Louisiana. The policy was in force on September 20, 1947 (R. 23), the date of the accident, but was cancelled on June 3, 1948 (R. 23). Under the terms of the policy respondent had the right to go into Louisiana to inspect insured's premises, plants and equipment, to examine its books and to join in defense of suits on claims arising under the policy. There was no limit to the number of accidents covered by the policy.

Questions Presented

1. Has a state the right, in the exercise of its police power, to provide by statute[4] for substituted service of process upon an unauthorized foreign insurance corporation, which sells and delivers an insurance contract in the state through a broker residing in the state, to one of its citizens, covering a risk located in the state, in a suit in a court in the state, on an obligation arising under the

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[4] Act 179 of 1918, sec. 1, subdiv. (6) par. (c); Act 105 of 1898, Art. II, sec. 1; Act 195 of 1948, secs. 21.05 & 27.03 (a) & (b); Appendix, pp. 38, 39, 40.

contract in the state, if the insurance company is not otherwise transacting business in the state and has not appointed an agent upon whom service of process may be made as its agent in such a suit, so as to subject the unauthorized foreign insurer to the jurisdiction of courts sitting in Louisiana?

2. Did the sale and delivery by respondent in Louisiana to a Louisiana citizen, through a Louisiana broker, of a series of successive, annual insurance contracts, covering the unbroken period from January 1, 1944, to June 3, 1948, during which period respondent was continuously obligated under the policies to pay to any Louisiana citizens, injured in any number of accidents, during the life of such contracts, damages for bodily injury or death caused to such citizens by the negligence of the insured in the operation of its public utility business in Louisiana, with the right on the part of respondent to go into Louisiana in order to inspect insured's premises, plants, and equipment, examine its books and defend suits which might be brought against insured on claims arising under the policies,—did such activity in Louisiana constitute such a "minimum contact" or "tie", and establish such a "continuing relationship," within that state of such quality as to give Louisiana courts jurisdiction, under appropriate Louisiana process statutes,[5] of respondent's person in this suit brought by a Louisiana citizen on a cause of action growing out of such activity?

3. Did such activity by respondent constitute the "transacting of business" by it in Louisiana for the purpose of subjecting it to the jurisdiction of the trial court under Louisiana statutes providing that the "transacting

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[5] Act 179 of 1918; Act 105 of 1898; Act 195 of 1948, Appendix, pp. 28, 29, &c.

of business" by an unauthorized foreign insurer should be the equivalent of an appointment of the secretary of state as its agent for service of process?

4. Did the repeal of La. Act 105 of 1898, Art. II, sec. 1,[6] which required an unauthorized foreign insurer to appoint the secretary of state as its agent for service of process before issuing a policy in Louisiana, **after a cause of action arose under the policy** herein sued on which had been issued in Louisiana covering a risk located in Louisiana in violation of said statute and prior to its repeal, and after suit had been filed on the policy in Louisiana,—did such repeal deprive the plaintiff of the right, resulting from that violation, to have substituted service of process made upon the defendant insurer under another service of process statute, La. Act 179 of 1918, sec. 1, subdiv. (6) par. (c),[7] which was also in force at the time of the issue of the policy in the state and which latter statute had never been repealed?

5. Is an unauthorized foreign insurer which delivers an insurance contract to a Louisiana citizen in Louisiana, "required" by sec. 21.05 of Act 195 of 1948[8] "to appoint and maintain an agent for service of process" in Louisiana within the meaning of par. (c), of subdiv. (6) of sec. 1 of Act 179 of 1918,[9] the Louisiana Service of Process Act?

6. Does par. (a) of sec. 27.03 of Act 195 of 1948,[10] the Louisiana Insurance Code, purport to make the issuance or delivery in Louisiana of an insurance contract by an unauthorized foreign insurer to a Louisiana citizen "equivalent to an appointment by such insurer of the

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[6] Appendix, pp. 38, 39.
[7] Appendix, p. 38.
[8] Appendix, p. 39.
[9] Appendix, p. 38.
[10] Appendix, p. 39, 40.

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secretary of state" as the insurer's agent for service of process in a suit arising out of such contract, though the unauthorized foreign insurer was not otherwise "transacting business" in Louisiana?

Reasons for Granting Writ

1. The court below has decided in this case three important questions of federal law which have not been, but should be, settled by this court. Those questions are stated above as No. 1, No. 2 and No. 3. The court below erroneously decided them all in the negative.

The first involves the right of a state, under its police power, to provide for its citizens by substituted service of process, a convenient forum for trying a suit against an unauthorized foreign insurer on a policy sold by the latter in the state of the forum on a cause of action arising under the policy in that state. As a matter of constitutional principle this right would seem to be indistinguishable from the right of a state to provide a convenient forum for its citizens in which to sue a non-resident motorist for damages caused by the latter in the state of the forum by the use of its highways, which right has long since been recognized by this court.[11] The vastness of the public interest in the sale of insurance policies across state lines which has also been recognized by this court,[12] would seem to make that activity peculiarly susceptible to regulation by the police power of the states. Surely the constitutional right of a state under its police power to subject an unauthorized foreign insurer, which sells and delivers a policy to one of its citizens within the state, covering the use of property located there, to the jurisdiction of its courts in a suit on the policy in a court of the state by substituted

[11] *Hess* v. *Pawloski*, 274 U. S. 352 (1927).

[12] *Prudential Insurance Co.* v. *Benjamin*, 328 U. S. 408 (1946).

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service of process, is a federal question of great importance which has not been settled by this court, at least since the acceptance of the principle of similar regulation by Your Honors in the leading motorist-statute case in the year 1927.[13]

2. The second federal question of great importance which was incorrectly decided below and which has never been settled by this court, but which should be settled by it, is really another aspect of the same problem which is presented by the first question and is academic here if the right of the state discussed in the first question is recognized.

This second question is, what activity by an unauthorized foreign insurer within the state of the forum short of the transaction of business within the definition of the old concepts is necessary to constitute a minimum "contact" or "tie" of such quality as to subject it to the jurisdiction of the courts of the forum under authority of the jurisprudence recently established by this court? The question is raised here by the necessity for the determination of whether the facts of this case as above set forth did subject respondent to the jurisdiction of the state and federal courts sitting in Louisiana. This federal question in turn raises another one of importance, that is, whether "dueness" of process depends at all on whether the suit against the unauthorized foreign insurer is brought by the state of the forum in the interest of all of its citizens, or by a private citizen for his own interest only. In other words, is "dueness" of process different in a so-called "regulatory suit" from what it is in a so-called "private suit" if the "activity" of the unauthorized foreign corporation and its resulting "contact" or "tie" with the forum is the same in each suit? This fallacious distinction in interpreting the jurisprudence of this court has been made elsewhere and

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[13] *Hess* v. *Pawloski*, *supra*.

was contended for in the court below. It is not clear, however, from the opinion of the court below whether it accepted and applied the distinction which is unsound [14] and should be rejected here to clarify the jurisprudence of this court on this important question of due process under the Fourteenth Amendment as it applies to the daily, voluminous sale of insurance polices across state lines by unlicensed foreign insurers.

3. The third federal question presented is whether the activity of respondent as represented by the facts outlined above constituted the "transacting of business" in Louisiana so as to subject it to the jurisdiction of the trial court under Louisiana statutes [15] providing for service of process on an unauthorized foreign insurer transacting business in the state. This question is of general importance because of the need for a re-definition, for the purpose of determining jurisdictional process, of the phrase "doing business" in respect of the activities of unauthorized foreign insurers in states where the substituted service of process statutes apply only to such insurers as are transacting or doing business in the state. But the question is of concrete importance here only if this court should hold that the process was not good on the other constitutional grounds hereinabove urged.

4. If the trial court had jurisdiction over the person of respondent the question of the applicability and efficacy of the state process statutes which plaintiff contends were designed to implement that jurisdiction must next be considered. A writ should be granted to review the decision of the Court of Appeals to the effect that none of the statutes relied on was available to petitioner because,

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[14] Barron & Holtzoff, Federal Practice & Procedure, Vol. 1, sec. 179, p. 314, N. 93.

[15] Act 179 of 1918; Act 105 of 1898; Act 195 of 1948.

as to those statutes, the decision is clearly in conflict with the only applicable local decisions and, in construing the statutes, the court below so far departed from the accepted and usual course of judicial proceedings as to call for the exercise of this court's power of supervision.

As we shall demonstrate in the brief which is annexed hereto, the only Louisiana decision [16] which construed two of the Louisiana statutes [17] under which process was so carefully served in this suit, **squarely held** that the process which was had on an unauthorized foreign insurer in a suit in a Louisiana court, by a Louisiana citizen, on a policy which the insurer had sold to another Louisiana citizen through the mails, **was good under those statutes.** The Court of Appeals, however, said that the process here was invalid because the first of those two statutes had been repealed. But the first statute [18] had been repealed [19] only **after the cause of action had arisen under the policy** as a result of decedent's death **and, indeed, only after this suit had been filed.** Nevertheless the court below, **without giving any reason whatever** why the repeal of the first statute after the cause of action had arisen under the policy on which this suit was filed, and **of which policy the statute had become a part,** invalidated the service of process under the second statute,[20] which process had been authorized by respondent's failure to appoint the secretary of state as its agent for service of process **as required** by the first statute, and held that the repeal did deprive plaintiff of the right to process under **the requirement** of the unrepealed statute.

Likewise, the Court of Appeals concluded cavalierly that, subsequent to the repeal of the aforesaid statute, no

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[16] *White* v. *Indiana Travelers Assurance Co.*, 22 So. 2d 137 (1945).

[17] Act 105 of 1898 & Act 179 of 1918.

[18] Act 105 of 1898, Art. II, sec. 1, Appendix, pp. 38, 39.

[19] Act 195 of 1948, secs. 31.11 & 32.01, Appendix, p. 41.

[20] Act 179 of 1918, sec. 1, subdiv. (6) par. (c), Appendix, p. 38.

equivalent statute had been enacted to take its place without even the passing tribute of a reference in its opinion to the statute [21] which plaintiff contends is obviously an equivalent.

The court below then held that the service of process was not good under another section of that statute [22] on the authority of the same decision [23] above referred to which, to the extent that it is applicable, strongly supports the process. In reaching this result in conflict with the said local authority the Court of Appeals ignored several cardinal rules of statutory construction and rejected the applicability of the several process statutes relied on by plaintiff **without discussion** in one short paragraph.

The important question of local law which the Court of Appeals decided in conflict with applicable local decisions [24] was that at the time of the service of process on respondent there was in effect, and available to plaintiff, no Louisiana statute for substituted service of process on respondent as an unauthorized foreign insurer which had issued and delivered a policy in Louisiana to a Louisiana citizen under the circumstances set forth above.

The errors of the court below with their resulting grievous injustice to petitioner and her children are demonstrated in the brief which is annexed hereto.

Because petitioner complied meticulously with the requirements of the invoked process statutes in making service upon respondent the latter tacitly abandoned its contention as to the insufficiency of service of process. That

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[21] Act 195 of 1948, sec. 21.05, Appendix, p. 39.

[22] Act 195 of 1928, sec. 27.0[illegible], pars. (a) & (b), Appendix, pp. 39, 40.

[23] *White* v. *Indiana Travelers Assurance Co., supra.*

[24] *The Flair, Ltd.*, v. *American Fire Insurance Co. et al.*, 135 La. 48, 64 So. 977, (1914); *White* v. *Indiana Travelers Assurance Co., supra.*

contention and the contention that the venue was improper, both of which had been overruled by the trial court, were ignored by the court below.

WHEREFORE petitioner prays that a writ of certiorari be granted to review the said judgment of the United States Circuit Court of Appeals for the Fifth Circuit in respondent's favor and that, after hearing, said judgment be set aside and the judgment of the trial court be reinstated at respondent's cost;

And for all general and equitable relief.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 319

MRS. BEULAH FISHER LEJEUNE, INDIVIDUALLY AND AS TUTRIX FOR HER MINOR CHILDREN,

Petitioner,

versus

EXCESS INSURANCE COMPANY OF AMERICA,

Respondent

BRIEF IN SUPPORT OF PETITION

May it Please the Court:

Opinions Below

The trial court's reasons for overruling respondent's motion to dismiss appears at R. 42, 43. The opinion of the Circuit Court of Appeals for the Fifth Circuit is printed at R. 74-80, and its order denying rehearing without reasons is printed at R. 98. The opinion is reported at 189 Fed. 2d 521.

Jurisdiction and Statement of the Case

The jurisdictional and other required facts are stated in the foregoing petition and will not be repeated here.

Specifications of Error

It is submitted that the court below erred:

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1. In holding that respondent had not subjected itself to the jurisdiction of the district court below in accordance with the requirements of applicable state process statutes[25] as a result of the delivery of the policy herein sued on;

2. In holding that, under all of the facts of the case as set forth in the foregoing petition, respondent had not established such a continuing relationship, and created such contacts or ties within the State of Louisiana, as made respondent subject to the jurisdiction of the district court below;

3. In holding that under the facts of the case respondent was not doing business in Louisiana on the date of the policy so as to be amenable to the jurisdiction of the district court below;

4. In holding that the repeal on October 1, 1948, of Sec. 1 of Art. II of Act 105 of 1898,[26] which required respondent to appoint in writing the secretary of state as its agent for service of process before issuing the policy herein sued on, **after** decedent's death on September 20, 1947, **created the cause of action herein sued on** and **after suit was filed** herein on September 17, 1948, rendered invalid the service of process which was made on May 19, 1949, on respondent through the secretary of state under act 179 of 1918, sec. 1, subdiv. (6), par. (c),[27] (R. 40, 41);

5. In holding that sec. 21.05[28] of Act 195 of 1948, does not require a foreign corporation to appoint and maintain an agent for service of process in the state within the meaning of Louisiana Act 179 of 1918, sec. 1, subdiv. (6) par. (c);

6. In holding that par. (a)[28a] of sec. 27.03 of Act 195 of 1948, did not apply to respondent as an unauthorized foreign insurer which delivered a policy in Louisiana to a Louisiana citizen because that statute applied

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[25] Act 179 of 1918; Act 105 of 1898; Act 195 of 1948.

[26] Appendix, pp. 38, 39.

[27] Appendix, 38.

[28] Appendix, 39.

[28a] Appendix, pp. 39, 40.

only to an unauthorized foreign insurer which, besides delivering a policy to a Louisiana citizen in Louisiana, was also otherwise transacting business there and respondent was not otherwise transacting business there when it delivered the policy herein sued on.

ARGUMENT

The current national importance of the subject of this brief and the lively contemporary interest in it, is indicated by an article entitled "Service of Process on Unlicensed Insurers" which, by coincidence, was published while this brief was being written in the July issue of the Insurance Law Journal. That article cites an interpretation by Judge Learned Hand[29] of the philosophy of *International Shoe Company* v. *Washington*, 326 U. S. 310 (1945), and reviews the opinion of this court in *Travelers Health Association* v. *Virginia*, 339 U. S. 643 (1950).

1

Jurisdiction by Statute under the Police Power

Since the answer to the first federal question presented turns on the jurisdictional effect to be given to delivery of the policy herein sued on by respondent in Louisiana, to a Louisiana citizen, affecting a Louisiana risk, under applicable process statutes it should first be noted that the policy is a **Louisiana contract which is governed by its laws.** The Louisiana Supreme Court has ruled:[29a]

> "• • • That the contract of insurance is **completed** at the place where the **policy is delivered** and the **first premium collected** has become familiar law."

And this rule was applied in another case[30] by the learned district below in this language:

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[29] *Bornse* v. *Nardis Sportwear, Inc.*, 165 Fed. 2d 33 (1948).

[29a] *City of Lake Charles* v. *Equitable Association*, 114 Ia. 836, 30 So. 578 (1905).

[30] *Landry* v. *Mutual Life Insurance Co. of New York*, 54 Fed. Supp. 356 (1944).

> This contract is to be decided under the laws of Louisiana, as the **delivery of the contract** to plaintiff, Landry, was **made in Louisiana**, and the **first premium** as well as all subsequent premiums to date have been **paid by Landry in this state.**"

From the fact that the policy sued on is a Louisiana contract it follows that **all Louisiana statutes governing its delivery and acceptance in Louisiana are deemed to be** written into it and become a part of it.[31] This is true of the Louisiana direct action statute [32] under which this suit was brought, and it is likewise true of the process statutes [33] which governed the delivery of the policy to the insured in Louisiana.

The question is therefore, did Louisiana have the constitutional right under its police power to regulate the delivery of this policy in the state to a Louisiana citizen, affecting the use of property situated in Louisiana, by requiring respondent to appoint the secretary of state as its agent for service of process in a suit on a cause of action arising under the policy.

It is submitted that there is no distinction between the essential nature of the regulation which resulted from such a requirement and the regulation which is imposed by the nonresident motorist statutes and by the Mississippi statute which was construed by the court below in *Sugg* v. *Hendrix*, 142 Fed. 2d 740 (1940).

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[31] *Johnson* v. *Anderson-Dunham Concrete Co.*, 212 La. 276, 31 So. 2d 797 (1947).

[32] *Dean* v. *Bituminous Casualty Corp.*, 72 Fed. Supp. 801 (1947).

[33] This Court said of a similar process statute in *Hunter* v. *Mutual Reserve Life Insurance Co.*, 218 U. S. 573, 583 (1910): "* * * It (the foreign insurer) had done business in the State and the former (process) act became part of its obligations to the policy holders. * * *"

The motorist process statutes are justified on the ground of regulation by a state under its police power but they regulate only to the extent that they afford a remedy to a citizen of the state of the forum to sue in the courts of that state and acquire jurisdiction therein over the non-resident motorist,—corporate or individual,—by substituted process. Insofar as the health, safety and morals of the residents of the state of the forum are concerned, the manner of the use of the highways by the non-resident motorist is not affected by the substituted service of process statutes. The use of the highways is governed by the existing laws of the state which directly regulate the manner of operation of vehicles on the highways, in the same way by residents and non-residents alike. Such motorist process statutes, therefore, don't protect the health, morals or safety of the residents of the state but **they do affect the general welfare** [34] of the citizens of the state which it is **the duty of the state to promote under the police power.**

The same thing is true of the Mississippi statute, the validity of which was upheld by the court below in the *Sugg* case. That statute didn't regulate the conduct of the individual non-resident defendant in the State of Mississippi so as to protect the health, safety or morals of the Mississippi plaintiff or his fellow citizens. The statute simply afforded to Mississippi citizens the right to sue in Mississippi courts non-residents performing "any character of work or service" in Mississippi by substituted service of process. Like the non-resident motorist statutes, this statute was justified as being regulatory under the police power, but the regulation was in the interest of the **general welfare** of the citizens of Mississippi whose right to use, as against a non-resident defendant, the substituted process

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[34] See the language of the court in the *White* case approving process under Act 279 of 1918 and 105 of 1898, Appendix, p. 42, 43.

afforded by the statute was recognized and enforced. The statute contained no mandate or prohibition affecting the health, safety or morals of Mississippi citizens.

The truth of the matter is that the **sole purpose of such a statute**, and its **only effect, is to provide a convenient forum** to the citizens of a state which enacts it and this also is its justification. In *Hess* v. *Pawloski*, 284 U. S. 352 (1927) this court, in upholding it, said of the motorist statute under consideration:

> "* * * The measure in question operates **to require** a non-resident **to answer** for his conduct in the state **where arise causes of action** alleged against him, as well as **to provide** for a claimant a **convenient method** by which he may sue to enforce his rights. * * *"

In the same way and to the same extent a statute providing for substituted service of process on a foreign insurer which issues or delivers a policy in the state of the forum to one of its citizens is a regulation of that activity of the insurer across state lines in order to provide, in the public interest, a convenient forum for suit against the insurer on an obligation growing out of that transaction in the state of the forum. And if it be said that the nature of the activity which is affected by the regulation is important in determining the power of the state to impose it, it will be remembered that the business of insurance, the primary function of which is to issue and deliver policies, has been declared by this Court to be affected with "a vast public interest,[35] and therefore subject to regulation by the states under the police power."[36] This right has also been expressly declared by federal statute.[37]

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[35] *Prudential Insurance Co.* v. *Benjamin, supra.*

[36] *California State Auto Association Inter-insurance Bureau* v. *Maloney*, 341 U. S. 105 (1951).

[37] The McCarran Act, 59 Statutes 33, 15 U.S.C. secs. 1011-1015.

There is no doubt that under the Louisiana non-resident motorist statute if respondent had negligently killed the decedent by the operation of an automobile on a Louisiana highway plaintiff could have sued it in that state by substituted service of process regardless of whether it had ever delivered an insurance policy there. Why, then, from a constitutional viewpoint, should she not be able to sue respondent in Louisiana by substituted service on an obligation arising under a policy delivered within the state, if the process is available by virtue of the regulatory effect of a statute enacted to afford a convenient forum?

Since we are now discussing only the effect of the delivery by respondent of the policy herein sued on under a statute providing for service of process upon the secretary of state as respondent's agent under the statute, and the constitutional validity of such a statute, we think it appropriate to refer to the language of Mr. Justice Douglas in his concurring opinion in *Travelers Health Association* v. *Virginia, supra.* He said at page 654:

> "• • • The requirements of due process may demand more or less minimal contacts than are present here, depending on what the pinch of the decision is or what it requires of the foreign corporation."

And in connection with that statement Mr. Justice Douglas referred with approval to an excerpt from this language [38] by the late Mr. Justice Rutledge developing the significance and implications of the philosophy of *Hess* v. *Pawloski, supra:*

> "• • • But the non-resident motorists' statutes, which are applicable to foreign corporations and the fact that they have been so widely enacted and sustained, show two things among others. The first, like

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[38] *Frene* v. *Louisville Cement Co.*, 134 Fed. 2d 511 (1943).

the cases sustaining jurisdiction upon a basis of 'solicitation plus', is that contracting, actually or continuously, is not essential for jurisdictional purposes, nor is negotiation, solicitation, or other activity looking toward the formation of contracts. The second is that some **casual or even single acts** done within the borders of the sovereignty may **confer power to acquire jurisdiction of the person,** provided there is also reasonable provision for givng notice of the suit in accordance with minimal due process requirements. Other instances may be noted. Old notions concerning want of power over nonresident partners and partnerships have been modified or discarded. New forms of service have been invented and sustained. In general **the trend** has been toward a **wider assertion of power over nonresidents and foreign corporations** than was considered permissible when the tradition about 'mere solicitaton' grew up."

It would seem clear, therefore, that under the jurisprudence of this court and by federal statute Louisiana had the right under its police power to require respondent to appoint the secretary of state as its agent for service of process in connection with obligations arising in Louisiana out of the policy sued on as a condition to the delivery of the policy in the state.

2

Jurisdiction Resulting from Continuing Relationship, Contacts and Ties

If it should be held that Louisiana didn't acquire jurisdiction over respondent's person as a consequence of the simple delivery of the policy sued on petitioner contends that this transaction, taken together with other related factors, had the effect of establishing such continuing relationships and constituted such a contact or tie within the State of Louisiana as to give the trial court below jurisdic-

tion under the service of process statutes which are discussed hereinafter.

The following factors, we believe, when considered collectively in the light of the recent jurisprudence of this tribunal, clearly show that the trial court was vested with jurisdiction over respondent's person: the policy sued on was a Louisiana contract governed by its laws; **the contract affected the use of property in the dangerous "business operations" of the insured public utility company** in Louisiana; (R. 24); the insured was a citizen of Louisiana; under the Louisiana direct action statute [39] which is deemed to have been written into the policy as a Louisiana contract,[40] not only petitioner but **every citizen of the state** had a right to sue respondent directly on a cause of action which might arise in his favor under the policy and within its coverage; there was **no limit to the number of accidents covered by the policy**; the obligation here sued on grew out of the policy **contracted by respondent in Louisiana**; respondent had broad rights under the policy to **inspect the insured's physical plant** and **examine its books** which would require it, and permit it, to go into Louisiana to exercise them; respondent's contacts or ties within the state had been kept in force by it through a series of contracts **continuously for a period of four and one-half years**; the Louisiana court was a **convenient forum** in which to try this case both for plaintiff and **for respondent** because plaintiff lived within its jurisdiction and **all the witnesses lived there where the accident happened**, whereas the courts of the state of New York, which was the domicile of respondent, were, for practical purposes, **inaccessible to plaintiff**; the character and method of process and service of process were **reasonable and effective** as is evidenced by the fact that respondent actually thrice received copies of the process and notice of

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[39] Act 55 of 1930, Appendix, p. 42.

[40] *Dean* v. *Bituminous Casualty Corp., supra.*

the suit as a result of the execution of the statutory provisions (R. 14, 38-41); and, finally, respondent had knowledge of the laws of Louisiana by virtue of having been previously qualified to do business there.

In the landmark case of *International Shoe Company v. Washington, supra,* this court, in determining the question of what activity within a state by a foreign corporation is necessary to subject the foreign corporation to the jurisdiction of the court of the forum, discarded the requirements of "doing business" as established by the old definitions and substituted less abstract and more realistic requirements. The fact that the defendant foreign corporation in that case was not qualified in the state of the forum, maintained no office or agents with power to contract there, and had appointed no agent for service of process in that state, did not prevent the corporation from becoming amenable to the jurisdiction of the courts of the forum. The test adopted was whether a continuous relationship had been established by the foreign corporation through contacts and ties within the state of the forum so as to make it consonant with "our traditional notions of fair play and substantial justice" to permit the state of the forum to enforce obligations which the foreign corporation had incurred in that state. The *ratio decidendi* of this court in that case may be summarized in these excerpts from the opinion:

> "Historically the jurisdiction of courts to render judgment in personam is grounded on their de facto power over the defendant's person. Hence his presence within the territorial jurisdiction of a court was prerequisite to its rendition of a judgment personally binding him. Pennoyer v. Neff, 95 U. S. 714-733. But now that the capias ad respondendum has given way to personal service of summons or other form of notice, due process requires only that in order to subject a defendant to a judgment in personam, if he be not present within the territory of the forum, he have

certain **minimum contacts** with it such that the maintenance of the suit does not offend **'traditional notions of fair play and substantial justice'.**

* * * * * * *

"'Presence' in the state in this sense has never been doubted when the activities of the corporation there have not only been **continuous** and systematic, but also **give rise to the liabilities sued on,** even though no consent to be sued or authorization to an agent to accept service of process has been given."

* * * * * * *

"It is evident that the criteria by which we mark the boundary line between those activities which justify the subjection of a corporation to suit, and those which do not, cannot be simply mechanical or **quantitative.** The test is not merely, as has sometimes been suggested, whether **the activity,** which the corporation has seen fit to procure through its agents in another state, **is a little more or a little less.** * * * Whether due process is satisfied must depend rather upon the **quality** and **nature** of the **activity** in relation to the fair and orderly administration of the laws which it was the purpose of the due process clause to insure. * * *"

* * * * * * *

"* * * It is evident that these operations establish sufficient **contacts or ties** with the state of the forum to make it **reasonable** and **just,** according to our **traditional conception of fair play and substantial justice, to permit the state to enforce the obligations which appellant has incurred there.** Hence we cannot say that the maintenance of the present suit in the State of Washington involves an **unreasonable or undue procedure.**"

Quite recently Your Honors have applied and extended the doctrine of the *International Shoe Company* case in

Travelers Health Association v. *Virginia, supra.* In the *Virginia* case a Nebraska insurer which was not authorized to do business in Virginia, maintained no office or agents there and had appointed no agent for service of process there, was selling insurance certificates to Virginia residents through the mails in violation of Virginia's "Blue Sky Law". Virginia obtained a judgment ordering the foreign insurer to cease and desist from selling such certificates to its citizens through the mails until the foreign insurer had complied with the requirements of the Virginia law. Process was served on the foreign insurer through the secretary of state and the insurer attacked the process as being in violation of the constitutional requirements of due process. The state court upheld the process and on appeal this Court affirmed.

After quoting from the opinion in the *International Shoe Company* case Your Honor Justice Black set forth the considerations which controlled the decision in the *Virginia* case.

He said:

> "• • • Instead we accorded 'great weight' to the 'consequences' of the **contractual obligations** in the state where the insured resided and the 'degree of interest' that state had in seeing that those obligations were faithfully carried out. • • •"
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> • • • • • • •
>
> "Measured by the principles of the Osborn, Hoopeston and International Shoe cases, the **contacts and ties** of appellants with Virginia residents, **together with that state's interest in faithful observance of the certificate obligations,** justify subjecting appellants to cease and desist proceedings under sec. 6. • • •"
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> • • • • • • •
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> "Moreover, if Virginia is without power to require this Association to accept service of process on the

Secretary of the Commonwealth, the **only forum** for injured certificate holders might be Nebraska. Health benefit claims are seldom so large that Virginia policyholders could afford the expense and trouble of a Nebraska law suit. In addition, suits on alleged losses can be **more conveniently tried** in Virginia **where witnesses would most likely live and where claims for losses would presumably be investigated.** Such factors have been given great weight in applying the doctrine of forum non conveniens. See Gulf Oil Co. v. Bilbert, 330 U. S. 501, 508. And prior decisions of this Court have referred to the **unwisdom, unfairness** and **injustice** of permitting policyholders to **seek redress only in some distant state where the insurer is incorporated. The Due Process Clause does not forbid a state to protect its citizens from SUCH INJUSTICE.**"

A distinction has been suggested, however, between "private suits" and "regulatory suits," on the ground that the requirements for due process in acquiring jurisdiction over the person of a non-resident corporation are narrower in the so-called regulatory suits than they are in private suits. We know of no valid distinction as to jurisdictional and process requirements between a suit brought by a state and a suit brought by a citizen against a foreign corporation under the Fourteenth Amendment to the United States Constitution. Rationally it would seem that process can't be "due" under the constitution against the non-resident defendant corporation in a suit brought by a state and not "due" in a suit brought by an individual citizen of the state against the non-resident defendant when the latter's activity, contacts and ties are the same in each case. As we understand it, jurisdiction over the person of the non-resident corporation is determined not by the character of the plaintiff's legal entity or the nature or purpose of the suit, but upon **what the defendant has done within the state of the forum** to make itself amenable to process under the Due Process Clause of the Fourteenth Amendment. We

quote from Barron & Holtzoff, Federal Practice & Procedure Vol. I, sec. 179, page 314, N. 93:

> "* * * It would seem that an action by a private person against the same corporation would have had the same results, provided the obligation sued on was as closely related to the transaction of business by the corporation in the state as the tax in the International Shoe Co. case."

It would appear, therefore, that under the facts of this case and the jurisprudence as represented by the *International Shoe Company* case and *Travelers* v. *Virginia* respondent by its activity in Louisiana before and after the delivery of the policy sued on had maintained such a continuing relationship, contact, or tie in Louisiana as to confer on the trial court jurisdiction over its person.

3

Jurisdiction Because of Doing Business

Petitioner also contends that as a result of its dealings in Louisiana from January 1, 1944, to June 3, 1948, respondent was transacting business in Louisiana within the definition of both of the statutes under which it was served.

As pointed out above, this court in the *International Shoe Company* case held that jurisdiction was acquired by the state of the forum over the defendant non-resident corporation because, although it hadn't fulfilled the old requirements for "doing business", its activity within that state was sufficient to make it consonant with our "traditional notions of fair play and substantial justice" for the state to require it to answer in its courts for obligations incurred there as a result of that activity.

But in *Hoopeston Canning Company et al.* v. *Cullen*, 318 U. S. 313 (1943), which was decided shortly before the

International Shoe Company case, this court had modified the definition of doing business under a New York statute. There again, though the contracts were made outside of the state of the forum, Your Honors held that the non-resident corporation was "doing business" within the meaning of the substituted service of process statute under examination. In reaching this conclusion Your Honors adopted and applied three tests which were stated in these words by Mr. Justice Black:

> "We conclude that in determining whether insurance business is done within a state for the purpose of deciding whether a state has power to regulate the business, considerations of the location of activity prior and subsequent to the making of the contract, Osborn v. Ozlin, supra, of the degree of interest of the regulating state in the object insured, and of the location of the property insured are separately and collectively of great weight. Applying any of these tests, it is apparent that the reciprocals are doing business in New York and are thereby subject to regulation by that state."

We have shown above (1) the character of respondent's business dealings in Louisiana from January 1, 1944, to June 10, 1946, the date of this Louisiana contract, and from the date of the contract to June 3, 1948, when the last of the series of contracts of which it was a part was finally cancelled, (2) that Louisiana had an interest in seeing that respondent should answer to her citizens in her courts on obligations growing out of respondent's Louisiana contracts and, (3) that the risk insured against was liability resulting from the operation of the insured's public utility plants in Louisiana. The importance of the location of this property in Louisiana was noted in the opinion in the *Hoopeston* case by Mr. Justice Black in these words:

> "The intimacy of the relation of these insurance contracts to the state of New York becomes even more

apparent when it is remembered that the property insured is in the State of New York."

It is submitted that respondent was doing business in Louisiana for the purpose of conferring jurisdiction on the trial court below. That was the conclusion of two federal district court judges who have had occasion to interpret and apply the *International Shoe Company* case and *Travelers* v. *Virginia,* in cases[41] much like the case at bar.

4

Process under Act 179 of 1918 [42]

The Court of Appeals stated that petitioner contended "that both with and without the benefit of the statutory aid she invokes, the service of process on Excess (respondent) was good, the jurisdiction of its person was present." As appears above, petitioner does vigorously contend that **jurisdiction** was present without the aid of the invoked statutes, but the court below erred when it stated that petitioner contended also that **process** was good without those statutes. Petitioner contends, however, that process was patently good under the invoked statutes.

(a) By Virtue of Act 105 of 1898

After respondent's motion was filed petitioner had it carefully served with process under Louisiana Act 179 of 1918, sec. 1, subdiv. (6), par. (c),[43] (R. 31-34, 40, 41). Respondent has never contended that the procedural requirements of that statute were not complied with. It will be

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[41] *Storey* v. *United Insurance Co.,* 64 Fed. Supp. 896 (1946); *Ace Grain Co., Inc.,* v. *American Eagle Fire Insurance Co. of New York, et al.,* 95 Fed. Supp. 784 (1951).

[42] Appendix, p. 38.

[43] Appendix, p. 43.

noted, however, that the procedure provided by that law is applicable only to a foreign corporation which was "required by law" to appoint an agent for service of process, but sec. 1 of Art. II of Act 105 of 1898 [44] made such a requirement. It provided that no foreign corporation should "issue policies, take risks or transact business in this state," without appointing the secretary of state as its agent for service of process in any action or proceeding against it in Louisiana.

In *White* v. *Indiana Travelers Assurance Company*, 22 So. 2d 137 (1945), it was **SQUARELY HELD** by the Louisiana Court of Appeal that Act 105 of 1898 **required** a foreign corporation **to appoint** an agent for service of process **within the meaning** of Act 179 of 1918, and **THAT SERVICE UNDER THOSE TWO STATUTES AGAINST THE DEFENDANT UNAUTHORIZED FOREIGN INSURER WHICH WAS NOT DOING BUSINESS IN THE STATE WAS GOOD.**

But the 1898 Act was repealed by Act 195 of 1948,[45] and the court below held that, as a result, service under the 1918 Act was invalid. The answer is that the 1898 Act was in force **when the policy sued on was delivered in Louisiana,** as well as when the cause of action herein asserted accrued on September 20, 1947, and when the suit was filed on September 17, 1948, and that the terms and provisions of that act must, therefore, be **considered as having been written into the policy as a part thereof.** And, besides requiring respondent to appoint the secretary of state as its agent for service of process, the section of the statute in question provided as follows:

> "• • • Said power of attorney **shall stipulate"** on the part of the foreign insurer that the authority

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[44] Appendix, pp. 38, 39.

[45] Appendix, p. 41.

> of the secretary of state to receive service of process **"shall continue in force so long as any policy, or other liability remains outstanding against"** the foreign insurer in the state.

That language is plain enough and has been applied by Louisiana's court of last resort in accordance with its literal meaning. The holding in the case of *The Flair, Ltd.* v. *American Fire Insurance Company, et al.*, 135 La. 48, 64 So. 977 (1914), was synopsized by Louisiana's court of last resort in the headnote thus:

> "The mandate of the Secretary of State to represent foreign insurance companies in the State of Louisiana for the purpose of the service of citation or other lawful process **continued in force so long as any policy or other liability, remains outstanding against the corporation in this state.** Act No. 105 of 1898."

And this Court has had occasion to recognize the binding effect of similar statutes of other states. In *Provident Savings Association* v. *Kentucky*, 239 U. S. 103, 114 (1915), this Court in reviewing its holdings in previous cases, said:

> "• • • The cases cited related to the validity of the service of process upon foreign corporations. And it was held that a foreign insurance corporation which had transacted business within the jurisdiction of a State continued, notwithstanding its withdrawal from the state, to be subject to service of process within the State, in actions arising out of the business so transacted, **where the service was made in accordance with the conditions upon which the business was permitted to be done.** • • •"

Since respondent's liability under the policy sued on was still "outstanding" at the time of service it is beyond argument that the authority of the secretary of state to receive service as respondent's process agent was still in force under Act 105 of 1898 and the process was good under the

decisions in the *White* case and in *The Flair, Ltd.*, case. The decision of the court below on this important question of local law was acordingly in direct conflict with the only two applicable local decisions.

5

(b) By virtue of Act 195 of 1948, Sec. 21.05

But even if the process had been invalid under Act 179 of 1918 because of the repeal of Act 105 of 1898, in spite of the fact that it was legally stipulated in the policy under the 1898 Act that the appointment of the secretary of state by respondent as its agent for service of process should continue so long as the policy remained outstanding against respondent in Louisiana, process would still have been good by virtue of Sec. 21.05 of Act 195 of 1948, the Louisiana Insurance Code which repealed Act 105 of 1898.

That law [46] provides that every foreign insurer shall appoint the secretary of state as its agent for service of process and that the appointment shall continue in force so long as any contract in this state shall remain outstanding. This statutory provision became effective simultaneously with the repeal of Act 105 of 1898 on October 1, 1948, and plainly "required" respondent to appoint the secretary of state as its process agent within the meaning of Act 179 of 1918, Sec. 1, subdiv. (6), par. (c). Yet **WITHOUT GIVING ANY REASON** the court below reversed the trial judge and held that the process was invalid because Act 105 of 1898 had been repealed and "no equivalent statute had been re-enacted to take its place."

By completely overlooking this obviously applicable and unambiguous statute the court below failed egregiously to give a Louisiana citizen the benefit of Louisiana law and dispensed injustice as a consequence.

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[46] Appendix, p. 39.

Process under Act 195 of 1948, Sec. 27.03 (b) by Virtue of Sec. 27.03 (a)

At the same time that petitioner made service on respondent through the secretary of state under Act 179 of 1918, because of the requirements of Act 105 of 1898 she also, out of an abundance of precaution, had respondent served through the secretary of state under par. (b)[47] of Sec. 5 of Act 159 of 1940 because of the statutory appointment of the secretary of state under par. (a) [48] of Sec. 5 of that act which resulted from the delivery of the policy as well as from the transaction of business in the state. If the validity of process on respondent must, as we contend, be determined by reference to statutes which were in force on June 10, 1946, the effective date of the policy, and on September 20, 1947, the date the cause of action accrued, then since process was good under Act 179 of 1918 by virtue of Act 105 of 1898, service under 159 of 1940 was surplusage and the question of the validity of that service is immaterial.

If, on the other hand, it should be thought that, contrary to local authority [49] and the jurisprudence of this Court [50] on the subject, the question of the validity of the process must be decided under the law existing at the time of the service of process on defendant in May, 1949 (R. 38-41), then the service was still good under Act 179 of 1918 because of the requirement of Sec. 21.05 of Act 195 of 1948.

And, finally, if it should be believed that, in spite of the Louisiana jurisprudence and the jurisprudence of this Court to the contrary, the court below was correct in nullify-

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[47] Appendix, pp. 41, 42.

[48] Appendix, p. 41.

[49] *The Flair, Ltd.*, v. *American Fire Insurance Co. et al., supra.*

[50] *Provident Savings Association* v. *Kentucky, supra.*

ing process under Act 179 of 1918 on the ground that neither Act 105 of 1898 nor Sec. 21.05 of Act 195 of 1948 was applicable, then petitioner submits that process was good on respondent under Sec. 27.03(b) of Act 195 of 1948 because of the provisions of Sec. 27.03(a) of that act.

Paragraphs (a) and (b) of Sec. 27.03 of Act 195 of 1948 [51] are re-enactments in substantially identical form of pars. (a) and (b) of Sec. 5 of Act 159 of 1940,[52] which latter act was repealed by the former. Of course, if respondent was transacting business in Louisiana the process was indisputably good under either or both of such statutes. Also, if the delivery of the policy under those stautes was equivalent to the appointment of the secretary of state as process agent, though respondent was not otherwise doing business in Louisiana, the process was good beyond question. But the court below held that respondent was not doing business in Louisiana, and, on the authority of *White* v. *Indiana Travelers Assurance Company, supra,* held that par. (a) of sec. 5 of Act 159 of 1940 applied only to foreign insurers which were transacting business in the state. Conceding, then, for the sake of argument that the validity of the process depends upon the applicability of the law prevailing at the date of service (May, 1949) instead of at the date of delivery of the policy, petitioner contends that process was still good.

It will be noted that process was served on respondent conformably to pars. (a) and (b) of sec. 27.03 of Act 195 of 1948, sec. (a) of which reads in part as follows:

> "The transacting of business in this state by a foreign or alien insurer without a certificate of authority and the issuance or delivery by such foreign or

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[51] Appendix, p. 40.

[52] Appendix, pp. 41, 42.

> alien insurer of a policy or contract of insurance to a citizen of this state * * * is equivalent to an appointment by such insurer of the secretary of state * * * to be its true and lawful attorney, * * *."

Now that provision has never been construed except by the court below. It is true that the same provision of Act 159 of 1940 was construed in the *White* case but that construction is obviously inapplicable to the 1948 act. In the *White* case the court said that the language just quoted was in itself ambiguous, that it was doubtful whether either the transacting of business or the simple delivery of a policy is equivalent to the appointment of the secretary of state as statutory agent, or whether only the transaction of business plus the delivery of a policy is the equivalent. The court said that it was not necessary to determine whether the word "and" after the word "authority" in the third line of the language quoted above was used in the conjunctive or disjunctive sense because a reference to the title of the act left no doubt that the act applied only to foreign insurers which were transacting business in Louisiana. The court said reluctantly:

> "In view of the specific and definite wording employed in the title, we can only hold that the act applies solely to insurers who are transacting business in the state without authority."

But Act 159 of 1940, including its title, was repealed by Act 195 of 1948,[53] and, though pars. (a) and (b) of sec. 5 of the former act were reenacted by the latter as pars. (a) and (b) of sec. 27.03 of the latter act, the title of the former act was not reenacted. It therefore follows that the construction of the 1940 statute in the *White* case is not authority for a construction of the 1948 statute which called for

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[53] Appendix, p. 41.

an original and independent construction by the court below. Indeed, in view of the effect given to the title of the 1940 Act in the *White* case and the subsequent repeal of the title, if that decision is to be considered at all in construing the 1948 Act, it can only be assumed that in reenacting the body of the 1940 Act without the title, the legislature intended to change the result [54] reached in the *White* case.

If the 1948 Act is construed without reference to the result reached in the *White* case, several pertinent rules of statutory construction combine to compel the conclusion that the intention of the legislature in enacting par. (a) of Sec. 27.03 of Act 195 of 1948, was to make the simple delivery of a policy in Louisiana to a Louisiana citizen by an unauthorized foreign insurer, as well as broader business activity, the equivalent of an appointment of the secretary of state as agent for service of process.

For fifty years from 1898 to 1948 when Act 105 of 1898 was repealed by Act 195 of 1948, it was the unbroken policy of the State of Louisiana to require unauthorized foreign insurers to appoint the secretary of state as agent for service of process in Louisiana before issuing a policy or taking a risk in the state even if they were not otherwise transacting business in the state. But if par. (a) of sec. 27.03 of Act 195 of 1948 should be construed to apply only to unauthorized insurers which are transacting business in the state, and if sec. 21.05 of Act 195 of 1948 does not require an unlicensed foreign insurer to appoint the secretary of state as its agent for service of process, then it must have

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[54] "The jurisprudence is well-settled that, even when a statute (particularly one which has been interpreted by the courts) is amended, and the wording of the act is altered, the Legislature intended to change the former law on the subject." *Hibernia National Bank* v. *Louisiana Tax Commission et al.*, 195 La. 43, 196 So. 15 (1940).

been the intention of the legislature to discard the policy of fifty years which required the appointment of the secretary of state as process agent upon the simple delivery of a policy in the state. But the trend is the other way so it should not be supposed[55] that the Louisiana legislature intended **to withdraw from its citizens the benefit of this long established and needed protection against unauthorized foreign insurers** when it adopted the Insurance Code in 1948 for the purpose therein announced.[56]

Another rule of construction which prevails in Louisiana as well as elsewhere, is to the effect that an interpretation should be adopted which will give meaning to every clause, sentence and word in a statute.[57] But if the provision in question is construed to apply only to insurers which are transacting business then the clause referring to the effect of the delivery of a policy in the state is absolutely meaningless because the transaction of business includes the delivery of a policy. Surely it wasn't the intention of the legislature to make the transaction of business **plus** the delivery of a policy equivalent to an appointment of a process agent but to exempt the transaction of business unaccompanied by the delivery of a policy from the same legal consequence.

The word "and" which is under discussion was obviously used in the sense of the word "or" and should be so inter-

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[55] 50 Am. Jur., Statutes, sec, 299, p. 280.

[56] "Insurance is a business affected by the public interest and it is the purpose of this Code to regulate that business in ALL ITS PHASES."—Act 195 of 1948, sec. 102.

[57] "It is a recognized rule of statutory construction that the act as a whole ought to be interpreted so that no clause, sentence, or word shall be superfluous, or meaningless, if that result can be avoided." *Hibernia National Bank* v. *Louisiana Tax Commission et al*, *supra*.

preted to effectuate the obvious intention of the legislature.[58]

The *White* case is certainly not authority for the construction of Act 195 of 1948 by the court below and there can be little doubt that if the court in the *White* case had been construing the statute before it without the compulsive language of the title to the act it would have reached a different conclusion.

The decision of the court below should be reviewed because it erroneously decided important federal questions that have never been passed upon but should be settled by this court, and because the court below has misinterpreted and misapplied local decisions and disregarded applicable statutes in arbitrary and ill-considered fashion in deciding an important question of local law contrary to Louisiana jurisprudence.

Respectfully submitted,

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[58] *Bradford* v. *Louisiana Public Service Commission*, 189 Louisiana 327, 179 So. 442 (1938); 50 American Jurisprudence, Statutes, sec. 282, p. 267.

APPENDIX

Act 179 of 1918,

Sec. 1, Subdivision (6), par. (c):

"If the (foreign) corporation, being one **required by law** to appoint and maintain an agent for service of process, has failed so to do, or such agent, if appointed, cannot be found, and said corporation has not established and maintained an office in the State, the officer charged with the duty of making the service, shall, after diligent effort, make return to the court, stating the efforts made by him to secure service, and the reasons for his failure so to do, and thereafter, the Judge, or in the event of his absence from the parish, the clerk, shall order service to be made on the Secretary of State, whose duty it shall be forthwith, to send, by registered mail, addressed to the corporation at its last known domiciliary post office address, the originals of the papers served upon them retaining in his office true copies thereof, upon which he shall note the date, the manner and other particulars of the service, and of the disposition of the originals; * * *"

Act 105 of 1898,

Art. II, Sec. I:

"Be it further enacted, etc., That, no Insurance company, corporation, association or society **organized under the laws of any State** in the United States, or any foreign country shall directly or indirectly **issue policies, take risks or transact business in this State,** until it shall have **first appointed in writing the Secretary of State of this State to be the true and lawful attorney of such company,** corporation, association or society, in and for this State upon whom all lawful process in any action or proceeding against the company, corporation, association or society may be served with the same effect as if the company, corporation, association or society existed in this State. Said power of attorney **shall stipulate** and **agree** on the part of the

company, corporation, association or society that any lawful process against the same, which is served on said attorney shall be of the same legal force and validity as if served on the company, corporation, association or society, **AND THAT THE AUTHORITY (TO RECEIVE SERVICE) SHALL CONTINUE IN FORCE SO LONG AS ANY POLICY, OR OTHER LIABILITY REMAINS OUTSTANDING AGAINST THE COMPANY, CORPORATION, ASSOCIATION OR SOCIETY IN THIS STATE.** A certificate of such appointment, duly certified and authenticated, shall be filed in the office of the Secretary of State and copies certified by him shall be deemed sufficient evidence. Service upon such attorney shall be deemed sufficient service upon the principal. * * *" (Parenthesis supplied.)

Act 195 of 1948,

Sec. 21.05:

"**Every foreign** or alien **insurer shall appoint** the Secretary of State to be its true and **lawful attorney in this state** upon whom, or some other person in his office during his absence he may designate, **all lawful process** in any action or proceeding against such insurer **may be served,** which **shall constitute service on such insurer.** Such appointment **shall continue** in force so long as **any contract** or other liability of such insurer in **this State** shall **remain outstanding.** Whenever such process shall be served upon the Secretary of State he shall forthwith forward a copy of the process by prepaid registered mail to the person designated for the purpose by the insurer."

Sec. 27.03 (a):

"The **transacting of business** in this State by a foreign or alien insurer without a certificate of authority and the **issuance or delivery by such foreign or alien insurer of a policy or contract of insurance to a citizen of this State** or to a resident thereof, or to a corporation authorized to do business therein, **is equiva-**

lent to an appointment by such insurer of the Secretary of State and his successor or successors in office, to be its true and lawful attorney, upon whom may be served all lawful process in any action, suit or proceeding arising out of such policy or contract of insurance, and the said issuance or delivery is a signification of its agreement that any such service is of the same legal force and validity as personal service of process in this State upon it."

Sec. 27.03 (b):

"Such service of process shall be made by delivering and leaving with the Secretary of State or with some person in apparent charge of his office two copies thereof and the payment to him of such fees as may be prescribed by law. The Secretary of State shall forthwith mail by registered mail one of the copies of such process to the defendant at its last known principal place of business, and shall keep a record of all process so served upon him. Such service of process is sufficient, provided notice of such service and a copy of the process are sent within ten days thereafter by registered mail by plaintiff's attorney to the defendant at its last known principal place of business, and the defendant's receipt, or receipt issued by the post office with which the letter is registered, showing the name of the sender of the letter and the name and address of the person to whom the letter is addressed and the affidavit of the plaintiff's attorney showing a compliance herewith are filed with the clerk of the court in which such action is pending on or before the date the defendant is required to appear, or within such further time as the court may allow. However, no plaintiff or complainant shall be entitled to a judgment by default, or a judgment with leave to prove damages, or a judgment pro confesso under this section until the expiration of thirty (30) days from date of the filing of the affidavit of compliance."

Section 31.11—**"Effective Date.**

"The provisions of Chapter 30 of this Code (secs. 30.10-30.22) shall go into effect at 12:00 noon on the twentieth day after the Legislature shall have adjourned. All other chapters shall become effective at 12:00 noon on the first day of October, 1948."

Section 32.01—**"Acts Repealed.**

"The following Acts are hereby repealed: **Act 105 of 1898, as amended; * * * Act 159 of 1940; * * *"**

Act 159 of 1940,

Sec. 5, par. (a):

"That the **transacting of business** in this state by a foreign or alien insurer without a certificate of authority and the **issuance or delivery by such foreign or alien insurer of a policy or contract of insurance to a citizen of this state** or to a resident thereof or to a corporation authorized to do business therein, **is equivalent to an appointment by such insurer** of the Secretary of State and his successor or successors in office, to be its true and lawful attorney, upon whom may be served all lawful process in any action, suit or proceeding arising out of such policy or contract of insurance, and the said issuance or delivery is a signification of its agreement that any such service of process is of the same legal force and validity as personal service of process in this state upon it."

Sec. 5, par. (b):

"Such **service of process shall be made** by delivering and leaving with the Secretary of State or to some person in apparent charge of his office two copies thereof and the payment to him of such fees as may be prescribed by law. The Secretary of State shall forthwith mail by registered mail one of the copies of such process to the defendant at its last known principal place

of business, and shall keep a record of all process so served upon him. Such service of process is sufficient, provided notice of such service and a copy of the process are sent within ten days thereafter by registered mail by plaintiff's attorney to the defendant at its last known principal place of business, and the defendant's receipt, or receipt issued by the post office with which the letter is registered, showing the name of the sender of the letter and the name and address of the person to whom the letter is addressed, and the affidavit of the plaintiff's attorney showing a compliance herewith are filed with the clerk of the court in which such action is pending on or before the date the defendant is required to appear, or within such further time as the court may allow. However, no plaintiff or complainant shall be entitled to a **judgment by default**, or a **judgment pro confesso** under this section **until the** expiration of thirty days from date of the filing of the affidavit of compliance."

Act 55 of 1930,

Sec. 1:

"That, after the passage of this act, it shall be illegal for any company to issue any policy against liability unless it contains a provision to the effect * * *. Provided further that the insured person or his or her heirs, at their option, **shall have a right of direct action** against the insurance company within the terms, and limits of the policy, * * *."

White v. Indiana Travelers Assurance Co., supra:

"We cannot refrain from the suggestion that the effect of the law prescribing a method of citation and service of process is **most salutary** and is **highly desirable in the protection of the General Welfare of citizens and residents of the State of Louisiana.** To us it seems no more than right and just that any company which derives the benefits flowing from the issuance of policies of insurance to citizens or residents of a

state **should subject itself to the jurisdiction** of the Courts of that State. **To admit of an interpretation** which would necessitate the assumption of a **burdensome expense and inconvenience** by a policyholder in an attempt to enforce a claim against a foreign insurer would be **incompatible with principles of common equity and right** as between the parties to **the transaction.**" —White v. Indiana Travelers Assurance Co., supra.